



October 14, 2002

Mr. Gary Grief  
Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR2002-5824

Dear Mr. Grief:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170595.

The Texas Lottery Commission (the "commission") received a request for information relating to Lotto Texas Jackpot winners since the lottery's inception in Texas, including the names and addresses of persons who are still receiving annual payments from lottery winnings. You state that the commission has released some of the requested information. The commission claims, however, that the addresses of lottery winners are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The commission raises section 552.101 in conjunction with section 466.022 of the State Lottery Act, chapter 466 of the Government Code. Section 466.002 provides in part:

- (a) Except as otherwise provided by law, all commission records are subject to public inspection in accordance with Chapter 552 [of the Government Code].

(b) In addition to commission records excepted from disclosure under Chapter 552, the following information is confidential and exempt from disclosure:

....

(3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information.

Gov't Code § 466.022. You state that the submitted information is a list of addresses for lottery winners, including their assignors. You assert that these addresses are confidential by law under section 466.022.

We first note that some of the submitted addresses consist of post office box numbers. Section 466.022 (b)(3) is applicable only to "the *street address* and telephone number of a prize winner[.]" (Emphasis added.) Thus, section 466.022(b)(3) is not applicable to a post office box number. Therefore, post office box numbers are not confidential under section 466.022 and thus may not be withheld from the requestor under section 552.101 of the Government Code. *See also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public).

Next, we must consider the extent to which section 466.022 is applicable to the remaining addresses. Section 401.309 of the commission's administrative rules addresses the assignment of lottery prizes. *See* 40 T.A.C. § 401.309. Section 401.309 defines the term "prize winner" as follows:

The name of the person who presented a valid ticket, claimed a lottery prize and was and is recognized by the Texas Lottery as the person entitled to receive the lottery prize payments *and who is not an assignee of the lottery prize.*

16 T.A.C. § 401.309(a) (emphasis added); *see also* Gov't Code §§ 466.406 (providing that right of any person to lottery prize is not generally assignable), .410 (prescribing court procedure for assignment of lottery prize).

You state that the submitted addresses are those of "lottery winners, *including their assignors.*" (Emphasis added). Thus, you indicate that some of the submitted addresses are those of *assignees* of lottery prize winners. Inasmuch as 16 T.A.C. § 401.309(a) excludes "an assignee of the lottery prize" from its definition of "prize winner," we conclude that the

street address of a prize winner's assignee is not made confidential under section 466.022(b)(3) of the Government Code.<sup>1</sup> *See also* Open Records Decision Nos. 658 at 4 (1998), 649 at 3 (1996), 478 at 2 (1987). Thus, the address of a prize winner's assignee is not excepted from disclosure under section 552.101 of the Government Code.

To the extent, however, that the submitted physical addresses are those of lottery prize winners, we agree that all such addresses are confidential under section 466.022(b)(3) of the Government Code. You do not inform us that any of the lottery prize winners to whom the submitted addresses pertain have consented to the public disclosure of their addresses for purposes of section 466.022(b)(3). Therefore, we conclude that the submitted physical addresses of lottery prize winners are excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.

In summary, the requested physical addresses of lottery prize winners are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 466.022 of the Government Code. The rest of the requested information is not confidential under section 466.022. As the commission raises no other exception to the disclosure of that information, it must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

---

<sup>1</sup>We note that section 466.015 of the Government Code authorizes the commission to adopt rules governing the establishment and operation of the lottery. A valid administrative rule generally is construed in the same manner as a statute and has the force and effect of legislation. *See City of Lubbock v. Public Utility Comm'n*, 705 S.W.2d 329, 330-31 (Tex. App. – Austin 1986, writ ref'd n.r.e.); *see generally* 2 Tex. Jur. 3d Administrative Law §§ 41, 42 (1995).

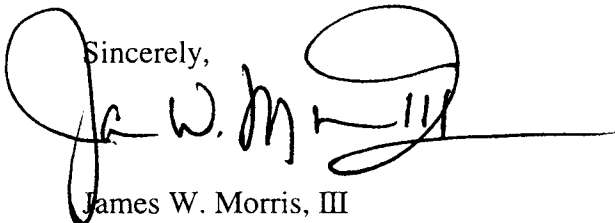
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 170595

Enc: Submitted documents

c: Mr. Johnny Carroll  
101 North Colorado Street  
Whitney, Texas 76692  
(w/o enclosures)